



Broadcasting Decision CRTC 2025-189

PDF version

Reference: Part 1 application posted on 20 January 2025

Gatineau, 31 July 2025

DHX Television Ltd.
Across Canada

Public record: 2024-0515-9

Complaint by DHX Television Ltd., carrying on business as WildBrain Television, against Rogers Communications Canada Inc. and its affiliates operating broadcasting distribution undertakings, alleging undue preference and disadvantage regarding the distribution of Family Channel, Family Jr., WildBrainTV and Télémagino

Certain information regarding this dispute was designated confidential by WildBrain and Rogers. The Commission is publishing this non-confidential version and has provided a confidential version that contains the entirety of the Commission's reasons to the parties to the dispute.

Summary

DHX Television Ltd., carrying on business as WildBrain Television (WildBrain), operates the children's service Family Channel and its multiplex children's services Family Jr., WildBrainTV and Télémagino (the WildBrain services).

In September 2024, WildBrain filed an application with the Commission in which it alleged undue preference and disadvantage pursuant to section 9 of the *Broadcasting Distribution Regulations* and condition of service 2 of Broadcasting Order 2023-332 by Rogers Communications Canada Inc. (Rogers) and its affiliates operating broadcasting distribution undertakings (BDUs). Specifically, WildBrain submitted that Rogers is putting WildBrain at an undue disadvantage and is giving an undue preference to the children's services provided by Corus Entertainment Inc. (Corus) and to the online streaming service Disney+.

After examining the positions of the parties and the record for the application in light of the regulatory framework, the Commission determines that Rogers has not subjected WildBrain to a disadvantage and has not given a preference to the comparable children's services provided by Corus, or to Disney+. The Commission considers that Rogers' actions do not contravene the confidential affiliation agreement with WildBrain or its regulatory obligations as a licensed BDU.

Accordingly, the Commission, by majority decision, dismisses WildBrain's complaint against Rogers.

The Commission notes that this decision was made under the existing regulatory framework. As part of its broader [regulatory plan](#) to implement the modernized *Broadcasting Act*, the Commission issued Broadcasting Notice of Consultation 2025-2, in which it launched a public consultation to examine the market dynamics between small, medium and large programming, distribution and online services, as well as the tools available to ensure the sustainability and growth of Canada's broadcasting system. A review of the Commission's existing dispute resolution mechanisms formed part of that public consultation.

Background

1. DHX Television Ltd., carrying on business as WildBrain Television (WildBrain), operates the children's service Family Channel and its multiplex children's services Family Jr., WildBrainTV and Télémagino (collectively, the WildBrain services).
2. Rogers Communications Canada Inc. (Rogers) is one of the largest broadcasting and telecommunications companies in Canada, with broadcasting assets in distribution, television and radio services.
3. On 20 September 2024, WildBrain filed an application against Rogers and its affiliates operating broadcasting distribution undertakings (BDUs) alleging undue preference pursuant to section 9 of the *Broadcasting Distribution Regulations* (the BDU Regulations) and condition of service 2 of Broadcasting Order 2023-332. More specifically, WildBrain contended that Rogers is giving an undue preference to the children's services provided by Corus Entertainment Inc. (Corus) and to the non-Canadian online streaming service Disney+, and is therefore creating a disadvantage towards the WildBrain services.¹ In WildBrain's view, Rogers is disrupting the discretionary television market for children's programming by distributing and marketing Disney+ on an integrated basis with its BDU services, as well as through free distribution of the service to Rogers subscribers.
4. According to WildBrain, Rogers has subjected the WildBrain services to negative treatment in comparison to WildBrain's direct competitors in the market, an action that could seriously harm the WildBrain services.
5. On 19 February 2025, Rogers filed a response to WildBrain's complaint, in which it argued that there is no unjust discrimination or undue preference. On the same day, the Shaw Rocket Fund and the Canadian Media Producers Association (CMPA) filed interventions in regard to the complaint.

¹ In citing Broadcasting Order 2023-332, WildBrain claimed undue preference by Rogers specifically in regard to Disney+. The Commission notes, however, that Broadcasting Order 2023-332 applies to online undertakings and not to licensed BDUs, such as those operated by Rogers' affiliates, which WildBrain is targeting in its application.

6. This dispute raises important matters relating to the changing environment for the distribution of linear programming services, particularly with respect to the children and youth genres. With the increasing availability of content on online platforms, Canadians face a corresponding increase in choice with respect to their viewing habits.

Regulatory framework

7. Paragraph 10(1)(h) of the *Broadcasting Act* (the Act) authorizes the Commission, in furtherance of its objects, to make regulations for resolving, by way of mediation or otherwise, any disputes arising between programming undertakings and distribution undertakings concerning the carriage of programming originated by the programming undertakings.
8. BDUs and programming undertakings can make use of the dispute resolution regime by virtue of the provisions set out in applicable conditions of service and in sections 12 to 15.02 of the BDU Regulations and sections 14 and 15 of the *Discretionary Services Regulations*, which were enacted pursuant to paragraph 10(1)(h) of the Act.
9. The standstill rule, set out in section 15.01 of the BDU Regulations, states that during a dispute concerning carriage or terms of carriage, the licensee shall continue to distribute the programming services at the same rates and on the same terms and conditions as it did before the dispute, until an agreement settling the dispute is reached by the concerned undertakings or, if no such agreement is reached, when the Commission renders a decision concerning any unresolved matter. The standstill rule applies automatically upon the filing of a notice of dispute.
10. Furthermore, section 9 of the BDU Regulations provides that a licensee shall not give an undue preference to any person, including itself, or subject any person to an undue disadvantage. It further states that the burden of establishing that any preference or disadvantage is not undue is on the licensee that gives the preference or subjects the person to the disadvantage. Condition of service 2 of Broadcasting Order 2023-332 sets out the above requirements specifically for certain online undertakings.
11. The appendix to Broadcasting Regulatory Policy 2015-438 sets out the Commission's Wholesale Code, adherence to which is imposed by conditions of service. The Wholesale Code guides certain aspects of commercial arrangements between BDUs and programming services.

WildBrain's position

12. According to WildBrain, Rogers has breached its obligations under section 9 of the BDU Regulations and condition of service 2 of Broadcasting Order 2023-332. Specifically, WildBrain argued that Rogers has subjected the WildBrain services to negative treatment in comparison to other children's services, focusing on those operated by Corus and on Disney+.

Rogers' position

13. According to Rogers, there is no unjust discrimination or undue preference in regard to its treatment of the WildBrain services.
14. Rogers did not argue against the comparability of the Corus services and the WildBrain services, focusing instead on the differences regarding the services' performance on its platforms, due in part to WildBrain's significant presence on digital platforms.
15. Rogers submitted, however, that Disney+, as an online streaming service, is not comparable to the linear WildBrain services. It noted in particular that Disney+ is offered on subscription video-on-demand and advertising video-on-demand models. Rogers added that while the WildBrain services are composed entirely of children's programming, they are fundamentally different from Disney+ in terms of programming, target audiences and popularity, and in the way they reach Canadian consumers via two distinct distribution arrangements. In Rogers' view, Disney+ is a distinct type of broadcasting undertaking with a different pricing structure offering different viewing and navigation experiences, as well as catalogues that reflect vastly different programming investment levels.

Interventions

16. The Shaw Rocket Fund and the CMPA expressed concerns over children's programming and independent programming more generally. While the Commission recognizes the importance of these types of programming to the broadcasting system, it considers that the issues raised by the interveners do not relate directly to the undue preference dispute between Rogers and WildBrain and, therefore, lie outside the scope of the current proceeding.

The Commission's approach to dealing with undue preference complaints

17. When the Commission examines a complaint alleging an undue preference or an undue disadvantage, it must first determine whether there is a preference or disadvantage, generally defined as dissimilar treatment of comparable entities.² Once the Commission has established that there is a preference or disadvantage, it must determine whether that preference or disadvantage is undue.³
18. This involves the Commission considering whether the preference or disadvantage has had, or is likely to have, a material adverse impact on the complainant or on any other person, as well as any impact the preference or disadvantage has had, or is likely to have, on the achievement of the objectives set out in the Act.

² In Broadcasting Decision 2019-427, the Commission stated that the term "comparable" should not be strictly defined, as its meaning depends on the context of a dispute and is best assessed on a case-by-case basis.

³ The burden of establishing whether that preference or disadvantage is not undue rests with the person giving the preference or disadvantage.

Issues to consider

19. After examining the record for this application, the Commission considers that it must address the following issues:

- What are the comparable entities for the purpose of the current complaint?
- Has Rogers given a preference to the Corus services and to Disney+ or subjected the WildBrain services to a disadvantage?
- If so, is the preference or disadvantage undue?

What are the comparable entities for the purpose of the current complaint?

20. After examining the record of this application, the Commission finds that the WildBrain services are comparable to the Corus services based on their genre of programming and target audience. Specifically, the WildBrain services and the Corus services air children's programming that is aimed at a similar audience.

21. While the functionality of and the technology used by linear services and online services are different, the issue in regard to the comparability of the WildBrain services and Disney+ relates to the content they provide. Disney+, with a large library of children's programming in addition to other genres of programming, offers content similar to that of the WildBrain services, aimed at a similar audience.

22. In light of the above, the Commission finds that the WildBrain services and Disney+ are also comparable services.

Has Rogers given a preference to the Corus services and to Disney+ or subjected the WildBrain services to a disadvantage?

23. In the Commission's view, Rogers' actions do not contravene the confidential affiliation agreement or its regulatory obligations as a licensed BDU.

24. Rogers as a BDU is carrying services from companies, including companies it competes with in other ways (such as Corus). BDUs are permitted to make business decisions that are consistent with the regulatory framework. The Commission recognizes that some of these decisions may have an impact on programming services but that they do not necessarily constitute an undue preference or disadvantage. To find otherwise would fundamentally undermine the business model of BDUs, as well as the ability of BDUs to make affiliation agreements.

25. In light of the above, the Commission finds that Rogers has not given a preference to the Corus services or to Disney+ and has not subjected the WildBrain services to a disadvantage.

Is any preference or disadvantage undue?

26. Given the Commission's finding that there is no preference or disadvantage, it is unnecessary for the Commission to reach a decision regarding whether any preference or disadvantage is undue.

Conclusion

27. The Commission considers that Rogers' actions do not contravene the Commission's regulatory framework, including the BDU Regulations, as well as Rogers' conditions of service.

28. The Commission determines that Rogers, in regard to the distribution of Family Channel and its multiplex children's services, Family Jr., WildBrainTV and Télémagino, has not given a preference to the comparable programming services offered by Corus and to Disney+ and has not subjected WildBrain to a disadvantage.

29. Accordingly, the Commission, by majority decision, dismisses the complaint by DHX Television Ltd., carrying on business as WildBrain. The Commission encourages the parties to continue pursuing a negotiated solution, if possible.

30. The Commission reminds broadcasting undertakings that the Commission's undue preference mechanism should not be relied upon to insulate a given service from the impacts of greater consumer choice such as through the provision of an effective access right or to create leverage in negotiations.

31. The Commission notes that this decision was made under the existing regulatory framework. As part of its broader [regulatory plan](#) to implement the modernized Act, the Commission issued Broadcasting Notice of Consultation 2025-2, in which it launched a public consultation to examine the market dynamics between small, medium and large programming, distribution and online services, as well as the tools available to ensure the sustainability and growth of Canada's broadcasting system. A review of the Commission's existing dispute resolution mechanisms formed part of that consultation.

Secretary General

Related documents

- *Notice of hearing – The Path Forward – Working towards a sustainable Canadian broadcasting system*, Broadcasting Notice of Consultation CRTC 2025-2, 9 January 2025
- *Review of exemption orders and transition from conditions of exemption to conditions of service for broadcasting online undertakings*, Broadcasting Regulatory Policy CRTC 2023-331 and Broadcasting Order CRTC 2023-332, 29 September 2023

- *Complaint by Quebecor, on behalf of TVA, against Bell, represented by BCE, alleging undue preference regarding the packaging of TVA Sports*, Broadcasting Decision CRTC 2019-427, 19 December 2019
- *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015